

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ENEAA EMBEDDED TECHNOLOGY, INC.,

Plaintiff,

v.

EMBEDDED CONTROL SYSTEMS, INC.,

Defendant.

No. 08 CV 5140

Judge Anderson
Magistrate Judge Schenkier

MOTION FOR ENTRY OF JUDGMENT

Plaintiff Enea Embedded Technology, Inc. (“Enea”), by and through its attorneys Miller, Canfield, Paddock and Stone, P.L.C., requests this Court enter an Order of Judgment against Defendant Embedded Control Systems, Inc. (“Embedded”). In support of its motion, Enea states as follows:

Introduction

1. Defendant Embedded defaulted on the settlement agreement by not making any of the three scheduled payments. (*See* Docket #12.) Pursuant to the parties’ agreement reached December 8, 2008, Enea is entitled to an automatic default in the amount of \$108,496.80 plus interest and attorneys’ fees in having to bring this motion. (*See* Docket #12.)

Background

2. On September 9, 2008, Plaintiff Enea filed a Complaint against Embedded for breach of contract and unjust enrichment. (*See* Docket #1.)

3. On September 10, 2008, Defendant Embedded was served with summons and a complaint. Embedded’s answer was due on September 30, 2008. (*See* Docket #9.)

4. Defendant Embedded contacted Plaintiff Enea on several occasions requesting that it not seek a judgment but, instead; give them additional time to pay the overdue invoices which are the subject of Enea's complaint. (Docket #1.)

5. Plaintiff Enea honored Defendant Embedded's requests on several occasions, but no payment was made and no appearance or answer was filed.

6. On November 19, 2008, Enea filed a Motion for Default.

7. On December 8, 2008 during a status hearing on Enea's Motion for Default, the parties agreed to the following:

Ms. Houck: We are agreeing to withdraw our motion for default. In exchange, the parties have agreed to settle the matter for \$108,496.80 in three – in three payments. The first one will be 25 percent of that due on or before January 15, 2009. The second installment will also be for 25 percent due on or before February 16th. And the last payment will be for the balance of 50 percent, will be due on or before March 16, 2009.

* * *

Ms. Houck: And the remaining terms are that if the party defaults, meaning if they miss a payment, there will be an automatic judgment on behalf of the plaintiff Enea which will include the balance owed plus interest and attorneys' fees in having to come back and collect the remaining amount.

The Court: Although I make it so easy, your fees don't even go up. But what can you say? Okay. Do you agree to that?

Mr. Roth: Yes, your Honor, on behalf of the defendant we do.

(Transcript, Docket #12.)

8. Defendant Embedded has not made one payment pursuant to this agreement.

9. Plaintiff Enea made several telephone calls and sent e-mails in an effort to avoid bringing this motion for judgment. (See attached letter and e-mails to Attorney John Roth, Ex. A.)

10. Plaintiff Enea has spent \$3,486.00 in legal fees in an effort to collect and ultimately file this motion for judgment. (See Affidavit of Cara M. Houck, Ex. B.)

11. The interest on the money owed to Enea is calculated as follows:

Invoice No.	Invoice Amount	Due Date	5% Interest Per Annum
10955	\$30,133.00	1/30/08	\$1,632.20
11001	30,134.00	2/29/08	1,506.70
11046	23,333.00	2/29/08	1,166.65
11055	1,563.80	2/29/08	78.19
11085	<u>23,333.00</u>	4/28/08	972.20
TOTAL	\$108,496.80		\$5,355.94
GRAND TOTAL			\$113,852.74
(Invoices plus Interest)			

WHEREFORE, Enea Embedded Technology, Inc. requests this Honorable Court enter judgment against Defendant Embedded Control Systems, Inc. in the amount of \$117,338.74 representing the principal balance owed plus interest and attorneys' fees.

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: s/Cara M. Houck
Attorney for Enea Embedded Technology, Inc.

Cara M. Houck
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CERTIFICATE OF SERVICE

The undersigned certifies that on February 11, 2009 a copy of the foregoing Motion for Entry of Judgment was filed electronically using the CM/ECF system, and served upon:

Gennady Shnaider, Esq.
General Counsel, ECS, Inc.
Embedded Control Systems, Inc.
1925 Ohio Street, Suite B
Lisle, Illinois 60532

by placing a true and correct copy thereof in a sealed envelope addressed as aforesaid, with postage prepaid, and depositing same in the United States mail box located at 225 West Washington Street, Chicago, Illinois.

s/Cara M. Houck